

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHANIEL PORTER,

Plaintiff,

Case No. 1:10-cv-131

v.

Honorable Paul L. Maloney

UNKNOWN PARTY et al.,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. This matter is before the Court upon Plaintiff's motion to alter or amend the judgment dismissing his case without prejudice for failure to pay the initial partial filing fee (docket #7).

By order entered February 16, 2010 (docket #4), the Court granted Plaintiff's request to proceed *in forma pauperis* and required Plaintiff to pay an initial partial filing fee of \$18.83 pursuant to 28 U.S.C. § 1915(b)(1). The Court ordered that the initial partial filing fee be paid within twenty-eight days, and warned Plaintiff that his case would be dismissed without prejudice should he fail to pay. On April 5, 2010, after more than twenty-eight days had passed, the Court dismissed Plaintiff's action for failure to pay the initial partial filing fee. Nine days later, on April 14, 2010, the Court received Plaintiff's payment of \$68.83. On April 15, 2010, Plaintiff filed a motion to alter or amend judgment under FED. R. CIV. P. 59(e). *See Huff v. Metro. Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982).

In his motion, Plaintiff alleges that he timely sought a disbursement of funds from his prisoner account and was not responsible for the delay in the Court's receipt of those funds. According to Plaintiff, the Michigan Department of Corrections (MDOC) withdrew the initial partial filing fee from Plaintiff's account on March 5, 2010, well within the 28-day period set by the Court. The payment, however, was not forwarded to this Court at that time. Shortly thereafter, the MDOC withdrew another \$20.00 for payment toward the remainder of the filing fee. Plaintiff alleges that, at the time he filed his motion, more than \$50.00 had been withdrawn from his account for payment of his filing fee installments in this action, a representation consistent with the \$68.83 now received by the Court. Because Plaintiff clearly submitted the disbursement authorization in a timely manner, Plaintiff's motion will be granted and his action will be reopened for further proceedings. Therefore:

IT IS ORDERED that Plaintiff's motion to alter or amend judgment (docket #7) is GRANTED;

IT IS FURTHER ORDERED that the Court's April 5, 2010 Order and Judgment dismissing the action (docket ##5, 6) are VACATED and this action is REOPENED for further proceedings.

Dated: April 26, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge